

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>Applicants:</b>	Nestoryak <i>et al.</i>	<b>Conf. No.:</b>	8177
<b>Serial No.:</b>	09/934,896	<b>Art Unit:</b>	2191
<b>Filing Date:</b>	08/22/2001	<b>Examiner:</b>	Vo, Ted T.
<b>Title:</b>	METHOD AND SYSTEM FOR INSTALLING A SOFTWARE PLATFORM ONTO A COMPUTER SYSTEM	<b>Docket No.:</b>	END920010006US1 (IBME-0013)

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Commissioner for Patents  
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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a *prima facie* case of obviousness based on an error in facts. Claims 1-35 are pending in this application.

Turning to the rejection, in the Final Office Action, claims 1-35 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Claims 1-35 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Hohndel *et al.* “Automated Installation of Linux Systems Using YAST”, 1999, hereafter “Hohndel” and RedBooks, “e-Business Intelligence: Leveraging DB2 for Linux on S/390,” hereafter “RedBooks.” Applicants submit that these rejections are clearly not proper and without basis because the limitation complained

of by the Office is described in the specification and because at least one claim limitation is not met by the combined features of the references cited by the Office.

Initially, as argued in the January 3, 2007 Amendment, Applicants submit that a plurality of control files is supported, and does not contradict, the specification as alleged by the Office. Page 9, lines 21-23 indicate that among the resources for which the resource server provides storage may be control files. To this extent, there may be control files provided, *inter alia*, in storage. Page 11, line 23 indicates as least a portion of the nature of these control files, stating that "..., a separate control file 52 preferably exists for each different software platform 54." To this extent, there exist many different control files, one for each software platform, one of which is queried based on the designated platform. Accordingly, Applicants respectfully submit that the Office's rejection under 35 U.S.C. §112, lacks factual support.

Furthermore, as argued in the January 3, 2007 Amendment, the cited references fail to teach or suggest each and every element of independent claim 1. In particular, the references cited by the Office fail to teach or suggest providing a plurality of control files, each control file pertaining to a different particular software platform and having entries of computer system identifiers pertaining to the particular software platform. January 3, 2007 Amendment, page 13, final paragraph through page 15, continuation paragraph. The Office admits that neither Hohndel nor Redbook teaches this feature. Final Office Action, page 7, continuation paragraph. Rather, the Office cites the single control files of each reference and attempts to use the rationale that it would be obvious to combine the two to get a plurality of control files. However, this rationale is flawed in that two references that use single control files teach exactly that, each application has a single control file and not multiple control files in the same application. Furthermore, each control file in the claimed invention pertains to a different particular software

platform and has entries of computer system identifiers pertaining to the particular software platform. As such, the cited references do not teach or suggest all of the limitations of the claimed invention.

Accordingly, the Office has failed to state a prima facie case of obviousness and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

With respect to the rejections of independent claims 9, 14, 16, 23, 29, 30 and 35, Applicants note that each claim includes a feature similar in scope to the features discussed herein with respect to claim 1. Further, the Office relies on the same arguments and interpretations of the cited references as discussed above with respect to claim 1. To this extent, Applicants herein incorporate the arguments presented above with respect to claim 1, and respectfully request withdrawal of the rejections of these claims for the above-stated reasons.

The dependent claims are believed to be allowable based on the above arguments regarding the claims from which they depend, as well as for their own additional features.

Applicants respectfully submit that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

Date: June 30, 2008

/Hunter E. Webb

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